

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	ORDER NO. D06-151
KPS Health Plans,)	
)	CONSENT AND ORDER
An Authorized Health Care Service)	LEVYING A FINE
Contractor)	

COMES NOW the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. KPS Health Plans (“KPS”) is authorized to conduct insurance business in the State of Washington.
2. In 2004, KPS filed three individual plans which provided that preventive care exams and well baby care exams were subject to the plan deductible. In 2005, KPS issued revised plans to all new sales and renewing individuals, which plans erroneously stated that preventive care exams and well baby care exams were not subject to the deductible.
3. KPS filed endorsements to these three plans, as well as a fourth which had become effective, to retroactively make preventive care exams and well baby care exams again subject to the deductible.
4. KPS did not provide its members who were renewing their plans 90-day notice of this change in their plans.

5. KPS mailed these endorsements to enrollees in all of the plans before they had been submitted to and approved by the OIC. KPS did not notify the OIC until several weeks later that the endorsements had been mailed, despite ongoing communication with the OIC regarding these endorsements.

6. The endorsements were disapproved.

7. KPS ultimately withdrew the endorsements in order to allow these two types of exams to remain outside the deductible under the 2005 contracts.

CONCLUSIONS OF LAW

1. By failing to issue a replacement notification to each enrollee 90 days prior to making this change and to offer each enrollee whose plan was being discontinued the option to enroll in any individual plan KPS currently offers without being subject to health screening, KPS violated RCW 48.43.038 and WAC 284-43-730.

CONSENT TO ORDER

NOW, THEREFORE, KPS consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the company's fine on such terms and conditions as are set forth below:

1. The OIC will impose a fine of Eight Thousand Dollars (\$8,000), and suspend Six Thousand Dollars (\$6,000) of that, on the conditions that:

a. Within thirty days of the entry of this Order, KPS will pay Two Thousand Dollars (\$2,000);

b. KPS will carry out the provisions of, and fully comply with, the Compliance Plan set forth as Exhibit A;

c. For a period of three years from the date of signing of this order, KPS will notify OIC no less than thirty days prior to sending out 90-day notices to members that their small group or individual plans are being replaced;

d. The Company understands and agrees that any future failure to comply with the statutes and regulations which are the subject of this Order constitutes grounds for further penalties which may be imposed in direct response to that further violation, in addition to the imposition of the suspended portion of the fine;

e. The suspended portion of this fine will be imposed at the sole discretion of the Insurance Commissioner according to the conditions set forth above, without any right to advance notice, hearing, or appeal; and

Consent and Order Levying a Fine Upon KPS Health Plans

EXECUTED this 16TH day of June, 2006.

KPS HEALTH PLANS


By: Elizabeth A. Gilje
President and Chief Executive Officer

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. KPS is ordered to pay a fine in the amount of Eight Thousand Dollars(\$8,000), of which Six Thousand Dollars (\$6,000) is suspended on the conditions set forth and agreed to above.
2. Two Thousand Dollars (\$2,000) must be paid in full within thirty days of the date of entry of this order. Failure to pay this fine and to adhere to the conditions shall constitute grounds for revocation of KPS's Certificate of Authority subject to any applicable rights of KPS to contest such action, and in the recovery of the fine through a civil action brought on behalf of the commissioner by the attorney general.

ENTERED AT TUMWATER, WASHINGTON this 27th day of June, 2006.

MIKE KREIDLER
WASHINGTON STATE INSURANCE COMMISSIONER


By: Andrea L. Philhower
Staff Attorney, Legal Affairs Division

Consent and Order Levying a Fine Upon KPS Health Plans

EXHIBIT A

COMPLIANCE PLAN

This Compliance Plan shall be for the term of three years from the date of the execution of Consent Order No. D06-151, or a different length of time as agreed by the parties.

INSTRUCTIONS

In response to the issues set forth in Consent Order No. D06-151, KPS Health Plans ("KPS" or "The Company") is instructed to comply with the following:

1. Instruction To The Company To Improve Its Regulatory Compliance, Including Retaining And Working With A Regulatory Compliance Consultant or Consultants.

A. Recognizing the Commissioner's authority under Title 48 RCW, the company is instructed to take appropriate steps, including the retention of special consultants and/or other expertise, to promptly analyze the company's current practices, identify and advise the company on problems in filing procedures and/or business operations which have caused or contributed to KPS's recent filing compliance issues, and implement appropriate remedial action.

B. KPS shall retain the 3 consultants that have been agreed to by the parties.

1. The consultants' work, if not already commenced, will begin no later than five business days from the date of the execution of Consent Order No. D06-151.

2. The Consultants are to Perform An Analysis of KPS's Filing Practices, And Design A Plan of Action To Address The Problems Identified In The Analysis.

A. The analysis of company practices shall be done according to the consultants' discretion and standard practice, but at a minimum is to include the following:

1. Consultant review of KPS's filing compliance history and practices, monitoring and oversight of filing activities, company infrastructure (e.g., lines of communication, reporting heirarchy, etc.), legal expertise, and legal assistance available for filing compliance issues; and

2. An intake meeting between the consultant and Deputy Commissioner Beth Berendt and any other OIC or KPS staff deemed appropriate by those entities. During this intake meeting, OIC representatives will describe for the consultant the OIC's experience and position respecting KPS's filing problems.

B. The plan of action is to be determined according to the consultants' and KPS management's discretion, with OIC consent. OIC expects that the plan will include, at a minimum, the following:

1. An assessment of problems and areas for improvement identified; including identification of:
 - a. Each problem;
 - b. The suspected or confirmed root cause(s) of the problem (i.e., lack of training, lack of oversight, faulty procedures, failure or lack of quality control systems, company culture, faulty patterns of communication, etc.); and
 - c. Areas for improvement (i.e. policies, procedures, training protocols, company attitudes or values, reporting relationships, allocation of job duties; etc.).
2. A plan of remedial action, including:
 - a. The consultants' recommendations to improve the performance of KPS's filing and compliance departments and any other departments identified as having problems or areas for improvement;
 - b. New or revised KPS policies and procedures designed to address existing problems and improve compliance;
 - c. A training plan; and
 - d. An internal audit structure for measuring outcomes of actions taken under the action plan.

C. The analysis and proposed plan of action are to be completed no later than 120 days from the date of signing of Consent Order No. D06-151, or as otherwise agreed upon in writing by the parties.

1. KPS will notify OIC within 3 days of receiving the analysis and proposed plan of action. A meeting will be scheduled between KPS, OIC, and the consultants to discuss results of the analysis and the proposed plan of action as soon as possible thereafter.
2. At this meeting, the parties will finalize and agree to the action plan and the structure for audits and reporting, if deemed appropriate by the parties.

3. **Instructions Regarding Implementation of Company's Action Plan.**

A. KPS shall fully implement the remedial action plan immediately upon approval by OIC.

B. An implementation period will begin following all parties' consent to the action plan. The length of this Implementation Period will be decided at the meeting discussed under 2C(1) based upon the consultants' recommendation, the time required to implement the plan, and subject to the agreement of all parties. During this implementation period, no audits will be required.

C. During the implementation period, KPS shall provide progress updates at least monthly via conference calls to OIC Deputy Commissioner Beth Berendt, unless a longer period is agreed upon by both parties.

4. Instructions Regarding Completion Of Implementation:

A. At the end of the implementation period, a meeting will occur between KPS and OIC (and the consultants if deemed appropriate by the parties) regarding the overall results of the compliance plan. At such meeting, the parties shall be prepared to review each of the compliance problems identified and the remedies implemented for each, and be prepared to discuss:

1. The activities undertaken, any problems encountered and their solutions, and the results of the activities.

B. At this meeting, the parties will agree upon the due date for the first audit report and the frequency of the audits, and finalize any details of the audits not completed during the presentation of the proposed action plan, discussed in section 2(C).

5. Instructions Regarding Consultant Follow-up

A. The consultants will conduct (a) return visit(s) and analysis to determine the ongoing effectiveness of the compliance plan.

B. The timeframe for the first follow-up visit is to be at the consultants' discretion but shall be no earlier than three months and no later than six months following the end of the implementation period. This is the only follow-up visit that is required under the plan.

1. Should one of the consultants be unavailable due to circumstances out of the parties' control, the other two remaining consultants will conduct this return visit.

2. Should two or all three of the consultants be unavailable due to circumstances out of the parties' control, the parties will conduct a conference call within three business days of discovering the consultants' unavailability to determine a contingency plan.

C. As soon as possible following this follow-up visit, there will be a conference call between the parties and the consultants to discuss the consultants' findings at the follow-up visit.

6. There Will Be A One-Year Stay On Enforcement Action By OIC For Any Violations Found As A Result Of Implementing The Compliance Plan.

A. For a one-year period after the execution of Consent Order No. D06-151, the OIC will stay any enforcement action based upon insurance code violations found by the OIC, or reported by KPS or the consultants, as a result of the compliance plan, unless the Insurance Commissioner in his sole discretion determines that an enforcement action is reasonably required to protect the interests of KPS, the insureds, or the public. At the end of that year, should OIC determine that any enforcement action is necessary for violations found as a result of the compliance plan, this will be brought as one consolidated action.

AUDITS

Note: This audit schedule is intended to supplement, not replace or otherwise impact, the current audit schedule in place pursuant to a previous agreement between KPS and OIC.

Commencing at the date agreed upon in section 2(C)(2), KPS shall perform self-audits in the manner determined in that section. These audits will continue until the end of the three years covered by this Compliance Plan, or as otherwise agreed upon by the parties.

A. The first such audit shall be completed, and the audit results submitted to the OIC, on the date agreed as set forth in section 4B, *supra*. Subsequent audits shall be completed thereafter according to the agreed schedule.

B. The audit results shall be sent Christine M. Tribe, Paralegal – Legal Affairs.

EXECUTED this 13th day of June, 2006.

KPS HEALTH PLANS

By: Elizabeth A. Gilje
Elizabeth A. Gilje
President and Chief Executive Officer

EXECUTED this 14th day of June, 2006.

MIKE KREIDLER
WASHINGTON STATE INSURANCE COMMISSIONER

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Staff Attorney, Legal Affairs Division